

Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Claims 1 and 5-7 have been amended, and claims 3 and 4 have been cancelled without prejudice. Claim 1 has been amended to incorporate some of the limitations of claims 3 and 4, now cancelled, and claims 5-7 have been amended to depend from claim 1. No new matter is introduced by these amendments. Descriptive support for the remaining amendments to claim 1 is provided, e.g., in the discussion of the embodiments illustrated in Figures 1 and 2.

The applicant would like to thank Examiner Mayo for the courtesy extended to the applicant's undersigned representative during the telephone conference on June 4, 2007. During the interview, the above-noted amendments to claims 1 and 5-7 were presented and discussed with regard to the art of record. Agreement was reached that these amendments overcome the art of record; the agreement was subject to an updated search. (The interview summary does not reflect that agreement was reached with respect to the two references discussed, but it should have.)

The rejection of claims 1, 2, 4, 5, 8, 9, 10, and 11 under 35 U.S.C. § 102(b) for anticipation by U.S. Patent No. 6,346,193 to Bauer ("Bauer") is moot with regard to previously cancelled claim 2 and presently cancelled claim 4, and is otherwise respectfully traversed in view of the above amendments.

Bauer teaches a containment boom for use in a reservoir. The boom includes a hood portion that contains flotation devices and a cable is also provided that spans between pilings to secure the boom position during use. The flotation system and the cable attach essentially to the same location on the curtain (i.e., at the upper edge of the curtain). Thus, Bauer fails to teach or suggest the use of two support systems, where the first is "connected to the sleeve" and the second is "connected to the central region," where the sleeve is formed at "an upper edge of the upper curtain portion," which "upper edge [is] spaced apart from the central region" (as recited in claim 1). It is this arrangement that allows the first and second support systems to maintain both the upper and lower curtain portions in a substantially sloped arrangement upon introduction of the boom into the body of water in the manner recited in claim 1. Because Bauer fails to teach or suggest each and limitation of claim 1, the rejection of claims 1, 5, 8, 9, 10, and 11 as anticipated by Bauer is improper and should be withdrawn.

The rejection of claims 1-3, 6, 8, 9, 12, and 13 under 35 U.S.C. § 102(e) for anticipation by U.S. Patent No. 6,485,229 to Gunderson, III et al. ("Gunderson") is moot with

regard to previously cancelled claim 2 and presently cancelled claim 3, and is otherwise respectfully traversed.

The PTO has taken the position that Gunderson teaches first and second support systems, citing to the flotation billets as one (i.e., item 312 in the embodiment illustrated in Figure 19) and the anchoring system as another (i.e., items 44, 46 in the embodiment illustrated in Figure 6). Applicant respectfully disagrees.

The anchoring system of Gunderson cannot be a support system according to claim 1 because the anchoring system is not (i) a floating support system comprising a plurality of flotation units, (ii) a permanent or semi-permanent structure comprising a plurality of pilings and one or more horizontal members spanning between adjacent pilings, or (iii) a combination consisting of (i) and (ii), as required by claim 1 of the present invention.

The PTO has separately asserted that the general discussion regarding deployment (cited language appearing at col. 13, lines 10-19, of Gunderson) references a second support system. Applicant respectfully submits that the cited language does not; it merely refers back to the type of support system described previously (i.e., the use of pilings and horizontal supports as one option for supporting the curtain). It does not reference a second support system as presently claimed, which is connected to a distinct position on the boom curtain and is of the type recited in claim 1.

Because Gunderson only teaches the use of a single support system, Gunderson is deficient in two respects. First, Gunderson fails to teach or suggest using a second support system connected to a distinct position on the boom curtain. As noted above, the anchoring system referenced by the PTO fails to meet the limitations of claim 1. Second, Gunderson fails to teach or suggest using first *and second* support systems that are connected in the manner described above (where the first is “connected to the sleeve” and the second is “connected to the central region”) to “maintain both the upper and lower curtain portions in a substantially sloped arrangement upon introduction of the boom into the body of water.”

Because Gunderson fails to teach or suggest either of these claim elements, the rejection of claims 1, 6, 8, 9, 12, and 13 as anticipated by Gunderson is improper and should be withdrawn.

The rejection of claim 15 under 35 U.S.C. § 103(a) for obviousness over Bauer is respectfully traversed. Because Bauer is deficient with respect to the above-noted limitations of claim 1 and claim 15 depends from claim 1, applicant submits that Bauer cannot have rendered obvious the subject matter of claim 15. For this reason, the rejection of claim 15 is improper and should be withdrawn.

The rejection of claims 15, 16, 17, and 19 under 35 U.S.C. § 103(a) for obviousness over Bauer in view of Gunderson is respectfully traversed.

The teachings of Bauer and Gunderson are set forth above. Because both Bauer and Gunderson are similarly deficient with respect to the above-noted limitations of claim 1, the combination of these references is likewise deficient with respect to claim 1. Because claims 15, 16, 17, and 19 depend from claim 1, the rejection of claims 15, 16, 17, and 19 is improper and should therefore be withdrawn.

The rejection of claims 15–20 under 35 U.S.C. § 103(a) for obviousness over Gunderson is respectfully traversed. The teachings of Gunderson are set forth above. Because Gunderson is deficient with respect to the above-noted limitations of claim 1 and claims 15–20 depend from claim 1, the rejection of claims 15–20 is improper and should therefore be withdrawn.

The objection to claims 7, 10, and 14 should be withdrawn, because claims 1 and 5-20 as presented are allowable for the reasons noted above.

In view of all of the foregoing, applicant submits that the present application is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Dated: July 26, 2007

/Edwin V. Merkel/
Edwin V. Merkel
Registration No. 40,087

NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1128
Facsimile: (585) 263-1600